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Cc: []
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From: CN=Tim Vendlinski/OU=R9/O=USEPA/C=US
Sent: Tue 9/4/2012 10:15:03 PM
Subject: Fw: Inside EPA on Bay Delta
[action plan](#)
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----- Forwarded by Tim Vendlinski/R9/USEPA/US on 09/04/2012 03:14 PM -----

From: Karen Schwinn/R9/USEPA/US
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Cc: gorke.roger@epa.gov
Date: 09/04/2012 08:56 AM
Subject: Fw: Inside EPA on Bay Delta

Unfortunately, the one error Inside EPA makes is wrt FIFRA.

----- Forwarded by Karen Schwinn/R9/USEPA/US on 09/04/2012 08:56 AM -----

From: Patti TenBrook/R9/USEPA/US
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Date: 09/04/2012 08:40 AM
Subject: Inside EPA on Bay Delta

This really overstates what's actually in the plan regarding pesticides. See bold below.

The Inside Story
EPA Unveils Bay Delta Action Plan
Posted: August 31, 2012

EPA has announced its plan for improving water quality in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary in order to protect the delta as a critical habitat for wildlife as well as protect drinking water sources, agriculture and recreational uses -- a plan that could have implications for a lawsuit seeking stricter EPA controls on agriculture in the region.

The agency announced the publication of the action plan Aug. 28, culminating a process to improve water quality impairments in the Delta region that began in December 2009. In the plan, EPA calls on the California State Water Resources Board to establish estuarine habitat water quality standards for the bay delta to protect aquatic species by June 2014; calls for the establishment of a Regional Water Quality Monitoring and Assessment Program; and supports the strengthening of existing total maximum daily loads (TMDLs) in the bay delta and upstream.

In the action plan EPA also says it will draft new site-specific selenium water quality criteria for the bay estuary by December; revise its Federal Insecticide, Fungicide & Rodenticide Act (FIFRA) regulations to more accurately account for the impacts of pesticides on aquatic organisms; advance implementation of the bay delta's methylmercury TMDL; and support the development of a Bay Delta Conservation Plan to protect aquatic life and ensure a readily available water supply for farms and cities.

The plan could impact an ongoing lawsuit by state fishing interests seeking more stringent controls on

agricultural drainage projects that allegedly contribute to elevated levels of selenium and other metals in the estuary, which in turn impacts the populations of fish in the area.

The Pacific Coast Federation of Fishermen's Associations (PCFFA) and other plaintiffs filed suit last November in the U.S. District Court for the Eastern District of California against the U.S. Bureau of Reclamation (USBR), arguing that the Grasslands Bypass Project (GBP) -- a system operated by USBR and the local water authority that removes excess groundwater from agricultural fields -- was a point source under the Clean Water Act (CWA) and was therefore subject to permitting requirements.

The suit, PCFFA, et al. v. Glaser, et al., could have a broader impact on tile drain systems nationwide if the court agrees with the plaintiffs' argument, since the CWA explicitly exempts tile drain systems and other forms of agricultural irrigation from CWA permitting requirements. Subjecting those systems to permits not only would greatly expand EPA's permitting program but also would likely spur a major backlash from the agriculture industry. Under the action plan, EPA says that the GBP is subject to a TMDL for selenium, but that the limits required under the TMDL are not being met and juvenile salmon are being adversely impacted as a result. To counter this, the agency says it will encourage local authorities to review the National Pollutant Discharge Elimination System (NPDES) permits for refineries in the northern end of the San Francisco Bay to see whether more stringent limits are necessary.

"Further reductions in selenium discharges to waterways may be needed to adequately protect selenium-sensitive species . . ." the action plan says. "EPA anticipates that the San Francisco Bay Regional Water Quality Control Board . . . will consider this issue as it completes the North San Francisco Bay TMDL."

One conservationist associated with the litigation has told a local news outlet that EPA's renewed interest in the estuary is welcome and the plan is a step in the right direction, but did not indicate whether the plan would in itself resolve the PCFFA suit. Bill Jennings, chairman and executive director of the California Sportfishing Protection Alliance -- which is a co-plaintiff in the PCFFA suit -- told the Central Valley Business Times Aug. 28 that the issues identified in the plan are on the right track but are "only a subset of issues that urgently need improvement."

"They acknowledge that current Clean Water Act programs are not adequately protecting aquatic resources in the Bay Delta Estuary," Jennings told the Times. "I assume by that they're also acknowledging their failure to adequately monitor the State and Regional Board's failure to implement the Act's provisions."

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